

# Exhibit 2

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2 SUPREME COURT OF THE STATE OF NEW YORK  
3 NEW YORK COUNTY : CIVIL TERM : PART 12  
-----x

4 In the Matter of the Application of  
5 MARIAH LOPEZ,

6 Petitioner,

INDEX NO.  
100032/2017

7 -against-

8 NEW YORK CITY DEPARTMENT OF HOMELESS  
9 SERVICES and PROJECT RENEWAL,

10 Respondents.

11 -----x  
12 May 12, 2017

13 60 Centre Street  
14 New York, New York

15 B E F O R E :

16 HON. BARBARA JAFFE,

17 Supreme Court Justice.

18 A P P E A R A N C E S :

19 MARIAH LOPEZ  
20 480 East 185th Street  
21 Bronx, New York 10458  
22 Petitioner Pro Se

23 NEW YORK CITY LAW DEPARTMENT  
24 OFFICE OF THE CORPORATION COUNSEL  
25 100 Church Street  
26 New York, New York 10007  
BY: THOMAS B. ROBERTS, ESQ.  
Attorneys for the Respondent  
City of New York

KAREN MENNELLA  
Senior Court Reporter

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2 A P P E A R A N C E S (Cont'd) :

3 NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES

4 HUMAN RESOURCES ADMINISTRATION

5 150 Greenwich Street, 30th Floor

6 New York, New York 10007

7 BY: TONIE BAEZ, ESQ.

8 Attorneys for Respondents

9 NYC Department of Homeless Services

10 and Project Renewal

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2 THE COURT: Okay. So, Miss Lopez, you want a stay  
3 of the transfer. Where are you now?

4 MS. LOPEZ: So since I actually -- so, right now  
5 I'm actually in between places, because they effectively  
6 forcefully removed me last night. I informed counsel that I  
7 was going -- I was coming here. We had a conversation. And  
8 they still removed me.

Also, do I need to stand, Your Honor?

10 THE COURT: No.

MS. LOPEZ: Okay. Since last night -- so I want to address the actual placement, which is the reason for my request for the TRO. But the City's attorneys are going to mention a WIN West Women's Shelter. So besides my overall argument, which I think will be enough to get me in the door, since last night two witnesses that are also victims of crimes that are transgender have come forward from being assaulted in that address. And I wasn't able to add those people's information either via affidavit on my own. So last night I did not go directly to where they asked me to go, because they said, Mariah, I've been assaulted there for being trans and showed me video.

23 So I am requesting a stay of the transfer. If the  
24 wording isn't correct, I apologize, it's because I had to  
25 run around yesterday and didn't get the poor person's order  
26 signed until after 5:00. So I am effectively sort of

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2 homeless again, because I will not enter a facility where  
3 two transgender women have been assaulted within the last  
4 couple of months.

5 THE COURT: Okay. So you don't want to go into  
6 that shelter?

7 MS. LOPEZ: Because the proper safe shelter for me  
8 is Marsha's Place.

9 THE COURT: You want to stay at Marsha's Place?

10 MS. LOPEZ: Yes.

11 THE COURT: Your name?

12 MR. ROBERTS: I'm Thom

12 MR. ROBERTS: I'm Thomas Roberts from Corp Counsel  
13 and with me is Tonie Baez from Department of Homeless  
14 Services, who is also an attorney.

15 THE COURT: Thank you.

16                   MR. ROBERTS: And she can speak about it better  
17                   than I can on the procedures. But the Women In Need shelter  
18                   is a shelter on the west side. The head of the organization  
19                   is the former Speaker of the City Council, Miss Quinn. It  
20                   is a facility that has police protection. It is, I'm told,  
21                   been always a nice facility.

22                 The reason for the transfer was that Miss Lopez has  
23                 been -- has threatened staff at Marsha's House. And she  
24                 acknowledged to me on the phone yesterday she had a  
25                 confrontation with a cafeteria worker, who's a 60 year old  
26                 African-American woman, and told her that outside she would

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2 arrange to have people confront this elderly lady outside in  
3 the street if the elderly lady didn't change her behavior in  
4 some way. That kind of threat against the staff is  
5 completely unacceptable and totally acceptable reason for  
6 DHS to place -- make the different placement.

7                   So we're offering her a safe, different placement.  
8  
9                   It's appropriate. There have been four transgender women  
10                  placed in that facility. Recently two of them have left for  
11                  permanent housing that was found for them. I understand two  
12                  of them are still there. This is a totally adequate place.  
13                  And we have, legally, DHS -- there also are all sorts of due  
14                  process rights if we exclude you from the whole system. But  
                     transfers within the system are within our discretion.

I'm citing to the Administrative Directive Transmittal 94 ADM 20, which on Page 36 says -- I'll try to read slowly -- but "whenever a homeless person is transferred from any temporary housing accommodation to another, Department Regulation 18 of New York CRR 358-3.6(e) provides the timely notice generally is not required. As long as the shelter need is being met in some form, it is unnecessary to provide the timely notice of prior hearing. However, each time a person is moved among temporary accommodations adequate notice of an opportunity for a fair hearing to challenge the adequacy of the new accommodations must be provided for the person."

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2 So if she -- if Miss Lopez wants to challenge the  
3 procedure, she can make a fair hearing challenge. But DHS  
4 has the right to transfer clients from one shelter to  
5 another, particularly in a safety concern where she has  
6 threatened staff at the existing facility. That's the gist  
7 of it. I think we're providing a safe, appropriate place  
8 for her to go.

9           Last night she left Marsha's House. We arranged to  
10          have a cab for her to take her there, paid for the cab. She  
11          left the facility, she never showed up to the WIN West. So  
12          she's never been there. She's never looked at the place  
13          we've offered. It is a well-established, well-run shelter.  
14          And I request that you deny the application and she can go  
15          there.

16                   For what it's worth, I note that we were before  
17                   Judge Caproni in the Federal Court about ten days ago  
18                   concerning the dog. I am surprised that Judge Caproni ended  
19                   the hearing. We conceded to letting her bring the dog.  
20                   She's got the dog. She can bring the dog to a new shelter.  
21                   That's not been an issue. Judge Caproni concluded the  
22                   hearing by telling Miss Lopez that she had to behave and to,  
23                   quote, "not be a jerk".

24 THE COURT: That is --

25 MR. ROBERTS: It was not to be a jerk. And now she  
26 has, indeed, threatened people. And it's appropriate to

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2 transfer.

3 THE COURT: Mr. Roberts, what about her fear  
4 about -- arising from her understanding that two women were  
5 attacked; what about that?

6 MR. ROBERTS: We have no -- there's no evidence  
7 that that's the case. What we do know is -- well, you can  
8 talk to this more directly.

9 MS. BAEZ: Your Honor, we reached out to the  
10 program administrator, who is actually overseeing the  
11 facility WIN West. They are, indeed, an employee and their  
12 responsibility is to ensure that the providers are complying  
13 with all regulations, including any safety issues. They're  
14 reviewing all of the transfers and making sure that there's  
15 adequate placement and all of that.

16                   We reached out to the program administrator at WIN  
17                   West to verify that, in fact, there were transgender  
18                   individuals currently placed there, placed there in the  
19                   past. They are not aware of any sort of incidents there,  
20                   particularly to transgender individuals. There are criminal  
21                   incidents at pretty much every single shelter facility  
22                   within New York City. Just like there's criminal incidents  
23                   occurring in every single apartment building in New York  
24                   City, whenever you have people living in an environment  
25                   together things occur. So there's no guarantee of  
26                   100 percent safety at any particular site. But there

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2 doesn't seem to be any particular pattern; there doesn't  
3 seem to be a history of incidents related specifically to  
4 transgender individuals. We have DHS police are on site.  
5 If there's any issue they have arrest powers; they have  
6 powers to search; they have powers to confiscate weapons.  
7 So we do have a very secure facility there and there isn't  
8 any evidence that this far we've seen that there's a  
9 particular danger there.

10 THE COURT: But, Miss Lopez -- well, actually,  
11 Mr. Roberts mentioned that two women had recently  
12 transferred out. Could that have been tied to what Miss  
13 Lopez says were these two incidents?

MS. BAEZ: Actually, Mr. Roberts said that two women moved out. They moved into permanent housing. They weren't transferred out. So actually were -- I don't know the details of their permanent housing, but they were either placed in some type of supportive housing environment or through some other type of City subsidy were able to acquire their own apartment and move out.

21 THE COURT: Okay. My other question is -- this is  
22 just a question. How does she go about, since she's  
23 already -- you already moved her out, how does she then do  
24 the challenge? I mean, why didn't you give her a chance to  
25 make the challenge? You're relying on your discretion to  
26 transfer her, but she can reserve her rights to have a

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2 hearing; is that true?

3 MS. BAEZ: She hasn't exhausted all of her  
4 administrative remedies. As of now there has been no fair  
5 hearing requested on the transfer --

6 THE COURT: She can do that after the transfer?

7 MS. BAEZ: Absolutely.

8                   THE COURT: I see. So, in other words, she can go  
9 to this new shelter or anywhere else, for that matter, and  
10 she could still have her fair hearing?

MS. BAEZ: Absolutely.

12                   THE COURT: Where everything will be out on the  
13 record and then she either wins at the hearing or doesn't.  
14 Let's say she does win at the fair hearing, what is her next  
15 step?

16 MS. BAEZ: If she did succeed at the fair hearing?

17 THE COURT: Then she goes back to Marsha's Place?

18 MS. BAEZ: Yes. And most likely the Administrative  
19 Law Judge would rule that DHS must place her back.

20 THE COURT: That's if she wins. If she does not  
21 win at the fair hearing, what happens next?

22 MS. BAEZ: Then she would remain at her current  
23 facility.

24 THE COURT: Would she have appeal from that or then  
25 she gets an Article 78?

MS. BAEZ: Then she be would be able to file for an

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2 Article 78.

3 THE COURT: That would be her final administrative  
4 remedy?

5 MS. BAEZ: Yes.

6 MS. LOPEZ: So I want to just first apologize for  
7 coming so unprepared. A lot of what I'm going to cite to  
8 first address my fear of irreparable harm is really why I'm  
9 here. I wasn't able to exhaust every single remedy that I  
10 requested. I did request for instructions on how to go  
11 about a fair hearing. And what I spent all day yesterday  
12 doing was trying to do everything that I could but file an  
13 Article 78 or even do things simultaneously. New York State  
14 allows for an exception to leading to exhaust all  
15 administrative remedies in an Article 78 proceeding where  
16 someone believes that there will be irreparable harm.

I'm glad that counsel mentions Speaker Quinn,  
because I've known the ex-speaker since I was a teenager. I  
gave testimony in front of the City Council that helped pass  
New York's regulation Local Law 3, Article 24 of the Human  
Rights Law for trans people. So the biggest thing I fear is  
being put in the position where I would either be forced to  
leave the shelter out of fear and return to doing sex work.  
In Judge Caproni granting the application in Federal Court  
across the street, the City is very aware that I have done  
sex work. Speaker Quinn is aware that I have done sex work

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2 openly. I'm an advocate for women's rights for the last  
3 decade or more. I have reached a point, because of my post  
4 traumatic stress disorder, that I just don't ever want to be  
5 put in that position.

Again, yesterday, in my conversations with counsel,  
I've come across a woman named Destiny Payon, who is  
actually my transgender daughter. Within trans culture you  
take on mentees. She was transferred out of WIN West on a  
similar administrative transfer after a physical  
altercation. While I was sitting here, Your Honor, I found  
it difficult to restrain myself in responding and keeping  
the decorum of the courtroom, because I do have impulse  
control disorder. And if put in a situation like Destiny  
where she claimed to me -- and if we need to have an  
evidentiary hearing we could do that -- if she claims she  
was afraid, I feel that if I'm put in that situation I might  
not be able to control my impulses. And the dog's safety,  
my safety, the safety of the staff there are what I'm  
considering.

In addition to that, I have the right to be around other transgender people. I am a transgender woman. And I actually fought in my teen years for New York City's Department of Homeless Services to even allow transgender identified people into sis or non-trans shelters. That does not mean we can be forced into them. So Marsha's Place is a

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first of its kind shelter. I do not know if Your Honor is aware that Marsha was my gay aunt or trans aunt. And I am now the executive director of Marsha's organization STAR, which was originally the Street Transvestite Action Revolutionaries and it's now the Strategic Transgender Alliance For Radical Reform. We've even been recognized by the White House and President Obama.

The incident that counsel keeps referring to has  
witnesses. And those witnesses aren't available on a Friday  
afternoon in front of this court in order to provide  
testimony about the incident and even if there was a direct  
threat. There is a lot that is not included in my request  
for TRO, because I'm a poor person who's disabled and not a  
lawyer and I had to rush because I was afraid. So number  
one, on principle, as the executive director of America's  
oldest trans rights group and someone that I have three  
landmark pieces of litigation under my belt for gay or trans  
people where I was one of the Plaintiffs. And so I want to  
say that even if this sets the precedent I'm going to try to  
set now, someone cannot force me into a facility that is for  
sis or legal females if I am transgender. Now --

23 THE COURT: So what about that, Miss Baez? That's  
24 a new issue that I don't see in the papers from you. So  
25 this new -- WIN West is it called?

26 MS. BAEZ: No. WIN West is the facility that we

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2 are -- that she's currently assigned to.

3 THE COURT: She's in Marsha's now and you want to  
4 transfer to WIN West?

5 MS. BAEZ: She's not a resident of Marsha's. She's  
6 already transferred into WIN West.

7 THE COURT: She was in Marsha's?

8 MS. BAEZ: Yes.

9                   THE COURT: I understand that. She wants to go to  
10                 WIN West, correct? I mean, no, you want to send her to WIN  
11                 West?

12 MS. BAEZ: Yes, that's correct.

13 THE COURT: And she's saying that's a sis facility;  
14 is that true?

15 MS. BAEZ: Your Honor, I don't know what that  
16 means.

17 THE COURT: For straight women.

18 MR. ROBERTS: For women, Your Honor. Not straight  
19 women, just women.

MS. BAEZ: It's not designated as a straight women's shelter. It's a women's shelter. DHS does have a transgender policy where we would place the individual in whatever they recognize as their gender, not where we would place them.

25 MS. LOPEZ: I'm transgender.

26 MS. BAEZ: The LGBTQ facility, which is Marsha's

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House, is a newer facility. It was recently opened up a few months ago and it is the only facility of its kind in the system. However, Miss Lopez did not qualify for Marsha's House because there's an age requirement up to the age of 30. The DHS actually made an exception to allow her to come into the shelter. She had to sign a contract with Project Renewal indicating that she would comply with all the rules and regulations, as well as any sort of case management services that were provided to her, which she did sign.

11 So, as I said, she was actually allowed in as an  
12 exception because she's over the age limit and has now  
13 basically broken several of the requirements under the  
14 contract that allowed her in as an exception, because she's  
15 not eligible for that facility.

16 THE COURT: The age?

17 MS. BAEZ: Yes.

18 MS. LOPEZ: May I address that, Your Honor?

19 THE COURT: Hang on. But didn't you also mention  
20 that there are transgendered women at WIN West?

21 MS. BAEZ: Yes.

THE COURT: I see. Okay.

MS. LOPEZ: New York City Human Rights Law, as well as the state executive order under Governor Cuomo issued, I think the year before last, gives the express authority to the individual to identify as they please. I want to say

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2 that as to the exception to the policy, the shelter director  
3 his self has said that the exception was imposed on Project  
4 Renewal by the Department of Homeless Services and there is  
5 not any -- the entirety of DHS is not separated or  
6 segregated per facility by age. Just like Marsha's is the  
7 only facility within DHS that accepts coed trans, gay,  
8 lesbian, bi-sexual, everyone, it is the only facility, the  
9 only one, that has a cap on the age.

Now, the irony of my place in New York's history as  
a trans activist and pioneer, as well as being the executive  
director of Marsha's organization and in need of immediate  
housing was the reason the exception was made. Because  
exceptions are made and I signed an agreement does not mean  
that I'm supposed to be subject to different rules than  
everyone in the facility.

17                   And I will then please posit that I am without my  
18                   witnesses that I can present at the hearing that would make  
19                   my entire argument that, yes, I must follow rules. But,  
20                   Your Honor, there have been incidents both between threats  
21                   from staff and actual clients assaulting staff and other  
22                   clients within the last three days. And whether DHS has  
23                   honored the request for Project Renewal transfers or even if  
24                   Project Renewal has requested transfers, I'll never be privy  
25                   to that information because that is protected information.  
26                   There are at least 15 gay, lesbian, bi-sexual, transgender

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and gay people that are willing to come to court if Your Honor doesn't issue the TRO to follow through with any Article 78 proceeding or even at any fair hearing proceeding to assert the fact that Mariah's here now in this court because she was transferred after seeing discrimination. And as the executive director of America's oldest transgender rights group with impulse control disorder, I snapped verbally. My threats, words coming out of my mouth from someone with post traumatic stress disorder and impulse control disorder, cannot be deemed more serious than the physical assaults that have taken place over the last couple of days at Marsha's.

Simply put, Your Honor, since the day where they opposed Judge Caproni's order across the street to put me back in Marsha's, they have applied the rules unfairly. And without actually having witnesses around about the incident that they used as the catalyst to transfer me, I'd like to ask Your Honor to rely on the fact that no court can determine when one person that's a sex worker says that they can't deal with even the prospect of having to do it again, that is the irreparable harm. In addition to the fact that I'm afraid that I will be pushed to the brink of potentially defending myself or my service animal and that two days, three days back at Marsha's --

THE COURT: Miss Lopez, that's not a threat, is it?

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I mean, you know.

3 MS. LOPEZ: No. What was? Wait.

4 THE COURT: I think that, you know, either you can  
5 comply with the rules or you can't comply with the rules.

6 MS. LOPEZ: No, no, no. What I meant was --

7 THE COURT: You're talking about you can't comply  
8 with the rules because you have a problem with impulse  
9 control.

10 MS. LOPEZ: No, no, Your Honor. I apologize. What  
11 I was trying to point out is that there are other people  
12 with similar conditions. And if those are the reasons that  
13 the facility chooses to be lax on physical assaults or other  
14 actual threats and breaking stuff in the facility, literally  
15 people have been going around being worse than I have,  
16 assaulting staff and actually --

17 THE COURT: I don't think I heard that from that  
18 sentence. At any rate --

19 MS. LOPEZ: I apologize. I wasn't trying to  
20 actually excuse my behavior. What I was trying to point  
21 out -- I'm sorry, I'm not an attorney -- was that the rules  
22 are simply, since the day we left across the street, not  
23 being followed properly and that I did request --

24 THE COURT: Even if I should accept every single  
25 thing you say -- well, let me just ask them a question.  
26 Miss Lopez says that there is an exception to the failure to

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2 exhaust. Can you enlighten me about that? Where it's  
3 irreparable harm, that that somehow relieves her of  
4 exhausting her administrative remedies. Do you know  
5 anything about that? Did I say that right?

6 MS. LOPEZ: Yes, Your Honor. I know it's the law.  
7 I cannot cite it now.

8                   THE COURT: Well, they might know the law better  
9 than me, at this point, because I just got this. I didn't  
10 get the chance to research.

11                   Do you know anything about that, Miss Baez or  
12                   Mr. Roberts?

13                   MR. ROBERTS: Your Honor, I'm not aware of that  
14 exception, but I haven't researched it. I wouldn't swear to  
15 you that it doesn't exist. I'm sorry, I can't help you.

16 THE COURT: I'm not sure either. I think -- I do  
17 know it's black letter law pretty much that you have to  
18 exhaust your administrative remedies and that right now the  
19 fact -- tell me why. Tell me really why, Miss Lopez. The  
20 fact that two people were assaulted doesn't mean that you're  
21 going to be assaulted.

22 MS. LOPEZ: Absolutely. In fact, in keeping with  
23 the City's arguments, I can actually be afraid of being  
24 criminally liable myself. I'm afraid that in the defense of  
25 my personal safety I'll be involved in a physical  
26 altercation that could lead to a cross complaint and I could

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2 physically be incarcerated. I am not so much putting out  
3 there that because I have impulse control disorder I'll get  
4 there and I will somehow be violent to other people. I  
5 happen to have -- I've been transgender since I was a  
6 teenager. What I'm hearing firsthand from people I trust is  
7 that, at minimal, Your Honor, the verbal harassment from the  
8 females that are born females there against the very few  
9 transgender people there are too much to stand.

10 THE COURT: But that's anecdotal, right? I mean,  
11 right now I hear from them --

12 MS. LOPEZ: No, it's not anecdotal. I watched an  
13 actual video. And, obviously, I do not have that video.  
14 What happens is if this court rules that, number one,  
15 because this court isn't directly aware of the law that I  
16 cited without being an attorney or that it's only hearsay  
17 and it's anecdotal, then of course I know I have rights to  
18 re-approach and to potentially try to present the same  
19 evidence at the fair hearing. But what if then there is  
20 video or footage that I saw at 5:00 -- after 5:00 yesterday  
21 physically within the facility of WIN West where I saw a  
22 transgender person being attacked or assaulted verbally, how  
23 then do I determine --

24 THE COURT: By other shelter employees?

25 MS. LOPEZ: Yes, ma'am. I'm not so much concerned  
26 with that. I want to point out too that -- well, I think

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2 you asked me a question, Your Honor. And, yes, it is  
3 anecdotal. However, I don't know how casual we are getting  
4 on the record. I transitioned when I was 13. The person  
5 there, her name was Tonya, and she told me -- she actually  
6 gave me my first hormone injection when I was 13. I trust  
7 her with my life, literally. And if she says to me, doll  
8 baby, I'm a little older than you, you have a very bad  
9 temper, you might have a problem with the girls. And  
10 Destiny Payon shows me a video and I know it's WIN West,  
11 because there's staff I.D. as identified as WIN West, I'm  
12 concerned enough that I don't want to be criminally liable  
13 for a real physical altercation or I don't have to be  
14 subject to the type of verbal abuse that I can expect.

15 THE COURT: But, Miss Lopez, if you do have this  
16 problem, aren't you going to have this problem anywhere?

17 MS. LOPEZ: No, Your Honor, because I won't deal  
18 with people literally calling me tranny or him or saying why  
19 is that man in our facility. The dog attracts additional  
20 attention.

21 And I want to put something on the record really  
22 important. I'm a post-operative transgender woman, who  
23 actually had a landmark case across the street to get SRS  
24 for everyone, sexual reassignment for everyone in New York  
25 that can't afford it from foster care to people on Medicaid.  
26 I'm at the point in my transition where I may not want to

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2 always either have to be in the closet as transgender or  
3 answer uncomfortable questions from women who I co-habitate  
4 with, that the transgender and gay people at Marsha's will  
5 not ask me questions about my body or genitals or how long  
6 I've been transgender.

7 THE COURT: Okay. So what's the harm in her going  
8 back to Marsha's Place?

9 MS. BAEZ: Your Honor, the staff there is very much  
10 in fear of their safety. The transfer was based on the  
11 issue that we've mentioned, but that's not the only incident  
12 that Miss Lopez has had at the facility. So it's been a  
13 progression. And they, you know, they've tried to work with  
14 her and, at this point, they don't feel safe. I don't know  
15 whether or not the employee has actually filed a police  
16 report, but from what they're reporting that was the plan  
17 and maybe even filed an order of protection.

18 MS. LOPEZ: She can't file an order of protection.

19 THE COURT: Well, she doesn't feel safe at WIN  
20 West. She says she saw videotape, she heard it firsthand  
21 about these issues there. That it hasn't been reported to  
22 you doesn't mean it didn't happen.

MS. BAEZ: That is true, Your Honor, there is -- it  
is possible that especially verbal altercations that don't  
necessarily rise to a physical fight or a bigger issue that  
is going to be necessarily reported to us. However, we

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2 still do not believe that it is an unsafe environment. A  
3 verbal altercation is something that you could remove  
4 yourself from or you can tell staff and the staff will deal  
5 with it.

6                   THE COURT: The basis for this is a verbal  
7 altercation with the woman in the kitchen or in the  
8 cafeteria?

9 MS. BAEZ: Yes. But then she threatened. It  
10 wasn't just the verbal. It was the threat of possible  
11 physical -- of a physical altercation.

12 THE COURT: That's verbal, too, no?

13 MS. BAEZ: It is. However, as I stated, Miss Lopez  
14 has a shelter history. There's other evidence throughout  
15 her shelter history that she is willing to actually involve  
16 herself in physical altercations.

17 THE COURT: There have been physical altercations  
18 in Marsha's Place?

19 MS. BAEZ: In Marsha's Place, no. They've only  
20 been verbal incidents. But in other facilities there have  
21 been physical altercations.

22 THE COURT: Listen, I think right now she should be  
23 given a second chance there until Wednesday.

24 MS. BAEZ: Your Honor, I can't guarantee that  
25 there's actually a bed available there. I would have to  
26 verify whether or not there's a vacancy.

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2 THE COURT: Miss Lopez, she didn't interrupt you.

3 MS. LOPEZ: I apologize.

4 MS. BAEZ: Just for a brief explanation on how the  
5 system works is generally once somebody losses their bed  
6 there would be somebody else that's assigned to that bed.  
7 So I can't guarantee whether or not her bed is available.  
8 That's something that I would have to find out. And, you  
9 know, if we do end up having to place her back in that bed  
10 then, basically, we're going to have to remove a third party  
11 from that bed somewhere else.

12 THE COURT: You wouldn't want that to happen, would  
13 you?

14 MS. LOPEZ: Your Honor, physically I saw a picture  
15 of my room taken by one of the clients about ten minutes  
16 before I came to court. It's exactly how I left it  
17 yesterday. And the DHS officer's in charge of property  
18 security and he left my stuff in the room because I told him  
19 I would come back tomorrow with a court order.

20 THE COURT: She seems to have more recent  
21 information than you, Miss Baez.

22 MS. BAEZ: Well, let me explain. We did leave the  
23 room available for her to come back and get her belongings.  
24 She came back and packed. She did not take all of her  
25 belongings. At that point, the staff packed everything else  
26 up and now the belongings are in storage. They're no longer

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2 in the area where she was residing.

3 THE COURT: I see. As I said -- do you have  
4 anywhere to stay tonight?

5 MS. LOPEZ: No, Your Honor. Your Honor, may I  
6 please address what --

7 THE COURT: No, not yet.

8                   MR. ROBERTS: She has a place at WIN West. And the  
9 proposition, Your Honor, with all due respect, is that you  
10 can assert that because you're scared that we can't place  
11 you would, in essence, mean that we can't place anybody in  
12 our whole system.

13 THE COURT: I didn't say --

14 MR. ROBERTS: It's not the staff.

15 THE COURT: Mr. Roberts, this is a TRO we're  
16 talking about, a temporary restraining order. This is not  
17 permanent.

18                   MR. ROBERTS: But at the same time it's changing  
19                   the status quo. It's not -- because the status quo is she's  
20                   got an assignment to WIN West. And we put her -- we  
21                   provided that last night. We arranged specially for a taxi  
22                   to take her there. We paid for the taxi. She removed her  
23                   goods and left and didn't -- and then presumably told the  
24                   taxi driver not to take her there.

25 THE COURT: Okay. Where are your belongings now?

26 MS. LOPEZ: At my mom's, actually, who's an

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2 attorney, who told me to divert the cab last night to her  
3 house.

4 THE COURT: Just answer the question. Where are  
5 your belongings?

6 MS. LOPEZ: In the basement of 45 Park Terrace West  
7 where my foster mother lives.

8 THE COURT: Are you able to stay with her?

9 MS. LOPEZ: No, Your Honor. That's why they're in  
10 the basement.

11 THE COURT: Okay. So pending -- I can't -- I think  
12 Mr. Roberts makes a point. I can't order you back there.  
13 First of all, I don't know if there's a bed. So that's  
14 impossible right now. But I will put it on for a hearing.

15 MS. LOPEZ: Your Honor, may I? I think that  
16 subjecting me to two or three days of potential homelessness  
17 and sex work because we cannot ascertain quick enough if  
18 there is a bed is not necessarily the right thing to do.

19 THE COURT: Miss Lopez, you don't have to engage in  
20 that. You can go to WIN West. And you can go there and you  
21 can sleep there, and you ignore everybody and stay out of  
22 trouble there, okay. And I am going to, in the meantime,  
23 see whether I can even sign this TRO or this order to show  
24 cause for your failure to exhaust remedies. I'm going to  
25 research that myself in the next few days, because it could  
26 be that you don't get any relief at all. But I'm willing to

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keep an open mind. And so I'm going to do my due diligence.

3

In the meantime, I cannot grant you any relief now, because I don't have chapter and verse as to whether or not you need to exhaust your administrative remedies.

6

MS. LOPEZ: If in the court's failure to be familiar with the statute is actually in conflict with the statute saying that I have due process to access the court when there is irreparable harm, how could your unfamiliarity with the statute, Your Honor -- may I please finish? How could your unfamiliarity with the statute, in addition to the fact that City Corporation Counsel is misrepresenting facts, how could that sway the decision -- the decision that you look like you were going to make several minutes ago where if there were a bed?

16

So it seems like right now it is fair to presume if someone was physically in that room, of course removing them wouldn't be right, and I might not even have the grounds. But the Legislature put out certain procedures. And if this court isn't familiar with them, the answer isn't telling the layperson, who has an emergency and a pro se hearing, we're all unfamiliar and someone rushed.

23

THE COURT: Miss Lopez, I really understand your point, and I'm really trying to dance with you. But I'm going to hold on to this before I sign anything and make sure, because not every judge has the entire Civil Practice

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Laws and Rules in their noggin. They don't. Forgive me.

3 MS. LOPEZ: But I'm in an emergency, which is why  
4 statute was created to begin with.

5 THE COURT: I'm going to look at that. I'm going  
6 to make sure. But I think that you're going -- first of  
7 all, you've been exercising excellent self control and  
8 impulse control right now before me. So I have confidence  
9 that you can --

10 MS. LOPEZ: Your Honor, may I please on the record,  
11 the incident at that facility --

12 THE COURT: I'm confident that you can manage over  
13 the weekend.

14 MS. LOPEZ: I was witnessing literally a food  
15 service person under serve someone.

16 THE COURT: Miss Baez, can you make sure that at  
17 WIN West she can feel confident there?

18 MS. BAEZ: Yes, Your Honor.

THE COURT: I'm ordering you to do that.

20 MS. BAEZ: Yes.

21 THE COURT: In the meantime. Okay. Come back  
22 Monday instead of Wednesday. Come back Monday here to this  
23 courtroom, and I will --

24 MS. LOPEZ: With witnesses?

25 THE COURT: No. I'm not going to have a hearing.  
26 Off the record for a minute.

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2 (Whereupon, there was an off-the-record  
3 discussion.)

4 MS. LOPEZ: A transgender person was murdered in a  
5 New York City Department of Homeless Service shelter. I'm  
6 leaving here to go to that vigil as the executive director  
7 of America's oldest transgender rights group. I have no  
8 expectation of actual privacy within the shelter. The  
9 homicide that occurred happened outside of the shelter.

THE COURT: That was at WIN West?

11 MS. LOPEZ: No, Your Honor, but similar  
12 circumstances, and I am afraid.

13 THE COURT: Miss Baez, she's really afraid. What  
14 can you do for her?

15 MS. BAEZ: Your Honor, we could reach out to --

THE COURT: I asked her. What can you do for her?

17 MS. BAEZ: We can reach out to the facility and  
18 ensure that they're available to her when she arrives on  
19 site that comforts her and ensures her that she's aware of  
20 all the security procedures and who she would need to go to  
21 if there was an issue. We do have remedies when clients  
22 misbehave. So, for example, if there is a situation where  
23 she is being verbally attacked, we would look at that and  
24 possibly transfer the other individual based on their  
25 behavior. Or we, you know, maybe would even suspend the  
26 individual or sanction. There are other remedies.

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2 Suspension would be they wouldn't be able to come into the  
3 facility for a certain period of time. And a sanction is  
4 actually a termination of housing assistance for 30 days or  
5 longer if it is warranted by the behavior. So we do have  
6 remedies for those types of issues when they occur.

7 THE COURT: It seems to me, Miss Lopez, that she's  
8 telling me the staff, for whatever reason, at Marsha's Place  
9 she says they're afraid of you. That's what she says. That  
10 could be just as dangerous for you as WIN West.

11 MS. LOPEZ: No, Your Honor.

12 THE COURT: They're all afraid of you, who knows  
13 what they're going to do.

14 MS. LOPEZ: Your Honor, it is not the same, because  
15 if we're going to keep referencing that food service staff,  
16 that food service staff has been the subject of at least 18  
17 direct grievances from separate transgender people.

18 THE COURT: There you go.

19 MS. LOPEZ: Your Honor, let me put this --

20 THE COURT: I don't have the power to get rid of  
21 them.

22 MS. LOPEZ: Your Honor, the transgender people that  
23 live there feel that she literally or have reported to me,  
24 and I actually witnessed the day of the reported incident,  
25 giving transgender people less food with no explanation;  
26 dietary, nutritional or procedural for why one transgender

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2 person -- so what I'm explaining is, Your Honor, what might  
3 have facilitated the verbal interaction between myself and  
4 the food service person was me defending my civil rights.  
5 The altercations that could occur and arise and that have  
6 arose throughout the entire shelter system and that I  
7 believe to have occurred within WIN West are the type that  
8 are physical and violent in nature and are not two people  
9 arguing over civil liberties or protected civil rights.  
10 They are you have a certain genital, you should not be here.  
11 That is sexual harassment.

12 THE COURT: This is not -- I can't go into this  
13 detail now, Miss Lopez. I just can't. Come back Monday and  
14 we'll go into further detail, but --

15 MR. ROBERTS: What time, Your Honor?

16 THE COURT: What time is a good time on Monday?

17 THE COURT CLERK: 10:30.

18 MS. LOPEZ: I'm going to appeal to the First  
19 Department.

20 THE COURT: There's nothing to appeal. I'm not  
21 declining it, I'm holding on to it.

22 MS. LOPEZ: Is that what you're doing to me? I'm a  
23 bit confused. And what -- so you're holding on to it, not  
24 ruling it, still leaves me actually not in the status quo.  
25 It actually leaves me worse off than when I walked into this  
26 courtroom. I have not --

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2 THE COURT: Miss Lopez, I can't make factual  
3 findings. I can't make factual findings.

4 MS. LOPEZ: I understand that, but -- and the only  
5 reason --

6 THE COURT: Listen. I understand your position. I  
7 got to go now.

8 MS. LOPEZ: Sure. Thank you. Am I going to get  
9 those papers back?

10                   THE COURT: No, I got to read it. I got to look  
11 through them. I got to look at them. I want to make a  
12 thoughtful decision, Miss Lopez. I'm not nature. I don't  
13 just knee jerk.

14 MS. LOPEZ: I understand that. There are pieces --

15 THE COURT: And you come in at 4:20 on a weekend  
16 and that's what happens sometimes. A judge can't know  
17 everything.

18 MS. LOPEZ: Your Honor, you're right. I came in  
19 yesterday, and I also my dog was physically in the facility  
20 yesterday while I was running around.

21 THE COURT: I'm not faulting you. I'm just telling  
22 you the circumstances are not great. And for you they're  
23 not great. I get that.

24 MS. LOPEZ: Okay. So, Your Honor, right now what  
25 I'm not understanding --

26 THE COURT: She can't put you back there.

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2 MS. LOPEZ: Because?

3 THE COURT: She doesn't have a bed.

4 MS. LOPEZ: And that's not accurate, Your Honor.

5 THE COURT: She just told me that they removed your  
6 stuff.

7 MS. LOPEZ: I was, Your Honor, because I had  
8 surgery, in a single bed, which is there are only three of  
9 them. There have not been admitted to the facility three  
10 other people that meet the special requirements for the  
11 single room. There is absolutely -- there are still three  
12 single rooms for people with medical conditions.

13 MS. BAEZ: I would have to verify that. And I  
14 don't know how she would be aware of that considering she  
15 wasn't at the facility last night.

16 THE COURT: I can't do anything. Can you  
17 accommodate her?

18 MS. BAEZ: I don't know whether or not there's a  
19 vacancy.

20 THE COURT: Do your best to accommodate her over  
21 the weekend and Monday we'll revisit this.

22 MS. LOPEZ: And if there is a bed at Marsha's, is  
23 that an accommodation, Your Honor, which she's representing  
24 that the only reason I'm not being placed back there --

25 THE COURT: Give her a bed at Marsha's Place over  
26 the weekend. And we'll come back Monday, and I'll make a

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2 determination.

3 MS. BAEZ: The best we can do, Your Honor, is have  
4 her go there and wait for a bed to become available, if  
5 there is one available.

6 THE COURT: Wonderful.

7 MS. LOPEZ: So I'm going back to Marsha's to wait  
8 for a bed?

9 | THE COURT: Yes.

10 MS. LOPEZ: Thank you, Your Honor.

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C E R T I F I C A T E

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5 I, Karen M. Mennella, a Senior Court Reporter for the State of  
6 New York do hereby certify that the foregoing is a true and  
7 accurate transcription of my original stenographic notes.

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Karen M. Mennella

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Karen M. Mennella,

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Senior Court Reporter

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